

THE REASON ON CHINA'S REJECTION ON GRANTING REFUGEE STATUS TO THE NORTH KOREAN DEFECTOR

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ABSTRACT

This undergraduate thesis aimed to answer the reason why China rejected to grant the refugee status to the North Korean defector despite their commitment under the 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees. Historically, China has accepted some refugees from several conflicting countries. However, China did different approach regarding the North Korean who seek asylum to China, and even repatriated them at any time. This action was violating the international law as China has signed the 1951 Convention and 1967 Protocol. As a global power, China was expected to comply with the international law yet they still not abide it. Therefore in this research the writer would like to find out and explore the reason of China's rejection despite their obligation and the international I pressure. To puzzle out the unusual, this undergraduate applied National Interest Concept by Morgenthau and Foreign Policy Decision Making Model by Coplin. Thus, this research discovered that China's action mainly based on their interest on maintaining the stability within China and Korean peninsula.

Keyword(s): *North Korean defector, Refugee, Foreign Policy, China.*

Introduction

The United Nations Convention Relating to the Status of Refugees or known as the 1951 Refugee Convention is the main international legitimate document that becoming a centerpiece of International refugee protection nowadays. It was formulated in the immediate post-World War II period, largely in response to European refugee flows and in the context of the Cold War (Loescher, 1999). There are 143 countries which have agreed to the obligations under both the Refugee Convention and its Protocol (known as 'states parties') (The Refugee Convention, 2016). And China is one of those countries. September 24, 1982 is indicated the date of deposit of the instrument of accession by China with the Secretary-General of the United States (States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol). By agreeing on the convention, China has to obey the legal obligations including the right of resettlement and legal protection from deportation or forcible return to his country of origin (the so-called *non-refoulement* protection) (Loescher, 1999). According to the UNHCR, in 1981-1982 China

provided resettlement opportunities for 2,500 Lao and some Cambodian refugees. And as of December 2015, China has accepted a total of 301,622 refugees from several conflicted countries such as Vietnam, Somalia, Nigeria, Iraq, and Liberia (The People's Republic of China : Fact Sheet, 2015). . Unfortunately, China took a different action regarding the North Korean defectors by not recognizing them as refugees but as an illegal immigrant and even repatriated them at any time.

North Korean Defectors or also known as North Korean refugees is a term to refer the people who have managed to defect from North Korea. According to Human Rights Watch, People's Republic of Korea (DPRK or North Korea) is one of the most repressive authoritarian states in the world. North Korea is a socialist, highly centralized, and isolated state and have an extremely restrict rules, social constraints, and massive violation of human rights towards its citizen. United Nations Commission of Inquiry (COI) report on human rights in North Korea found the government committed crimes against humanity, including extermination, murder, enslavement, torture, imprisonment, rape and other forms of sexual violence, and forced abortion (World Report 2018 : North Korea Events of 2017, 2018). North Korean long-time pain and suffer make them want to liberate themselves by escaping from their secretive country. The exodus from North Korea began in the mid-1990s as a great devastating famine broke out across the country. This phenomenon caused food shortage, starvation, malnutrition, and the citizen have no choice other than look for the food in the neighboring country which is China. In recent years, the escalation of the migration is not only caused by economic deprivation, but also by political persecution. The terrible reality that faced by the North Korea defector did not budge China at all, and up until now China still labelled them as an illegal immigrant and even repatriated them to their home of origin when the punishments were ready to welcome them.

North Korean Defector : The Forgotten Refugee

There are two main elements when it comes to the definition of refugee, persecution and principle of non-refoulement. Persecution is the central concept of recognition of the refugee's status. There is no exact definition of persecution. According to Article 33 of the 1951 Convention, persecution may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other severe violations of human rights – for the same reasons – would also constitute persecution (Handbook

on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees , 1992)

One of the fundamental element in the 1951 Convention is the Non-Refoulement principle which the refugees cannot be sent home to their origin country when the risk of being persecuted and any other forms of torture is still going on (Lee W. , 2016, p. 56). Article 33 of the 1951 Convention stated the prohibition of expulsion or returned of the refugee as below:

"No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

Being a refugee means they left their foundation of life and tend to be very vulnerable. They usually came with nothing, and without legal protection, they will get into a defenseless position. This non-refoulement principle aims to protect those refugees from unjustified used power from the host country to coerce them back to the country of origin (Lee W. , 2016, p. 56).

The non-refoulement principle is not only defined in the 1951 Convention, but also on many other refugee agreements related, such as OUA Convention governing the Specific Aspects of Refugees Problem in Africa, 1984 UN Convention against Torture, and 1969 American Convention on Human Rights. It reveals that the non-refoulement principle is being embraced implicitly to the extent that this reflects the fact that refugee should not be forced back or refused entry (Lee W. , 2016, p. 57). Moreover, in 1981 the executive board of UNHCR, the Executive Committee of the High Commissioner's Programme (EXCOM) emphasized that the principle of non-refoulement should be strictly obeyed (Lee J. H., 2016, p. 33).

In terms of non-refoulement, it needs to be highlighted that a determination of refugee status is only a declaratory nature. It is better not be assumed that solely because a person has not been formally recognized as a refugee, they do not protect by the principle of non-refoulement (UNHCR, 1977). Regardless of whether they have accepted the refugee status or not, when they own a well-founded fear of being persecuted, then they should be protected under the principle of non-refoulement.

North Korea is a closed state. Therefore it is difficult to identify any interest articulation function performed by individuals or social or interest group for the political purpose. The outsider merely does not know enough about North Korea's society to make a reasonable interpretation of the North Korean political system (Kim S. S., 2001, p. 65). However, Japanese and South Korean scholar developed the theory namely "*suryongche* (Great Leader System)" to describe the whole of North Korea. *Suryong* system concept characterizes North Korea as an absolute dictatorship (Kim S. S., 2001, p. 46). *Suryong* system refers to a "*system whose purpose is to perpetuate the guidance of the leader through hereditary succession*" (Suzuki, 1992, p. 6). The leader of North Korea have the infinite power towards its citizen. North Korean is forced to have obedience to the guidance of the Leader. Furthermore, the Leader also took a really bold action regarding to those who escape illegally from their home country, those people who so called the North Korean defector.

It needs to be understood first that there are many terms on referring the North Korean who fled from their home country. Generally, they have been referred to as migrants, defectors, refugees, or asylum seeker. However, the most commonly used is "defector." According to the Cambridge Dictionary, a defector is a person who leaves his or her own country or group to join an opposing one. Many international communities such as the United Nations and many other official government documents used this term to refer the North Korean who fled from their origin country. (Eschborn & Ines Apel, 2014, p. 2).

There are many reasons why North Korean are escaping from their home of origin. Most of the defectors aim to go to South Korea where they are welcomed, but because of the impassable Korean Demilitarized Zone (DMZ), their only way out of North Korea is through China (Park, *The Forgotten Genocide: North Korea's Prison State*, 2013, p. 69). Historically, the first exodus of the North Korean defector was when an extreme famine hit North Korea in the 1990s. North Korean was suffered from starvation and malnutrition to the point they only can eat roots, grasses, and tree bark (O'Neill, 2009, p. 3). Even worse, in the biography of Lee Hyeonseo, a North Korean defector, she stated that the famine could drive people insane. The action of cannibalism proved it. The situation was so bad when it comes to the point North Korean people willing to eat the corpses of the dead to keep alive (Lee H. , 2015, pp. 194-195). Here's come the highlight of prison camps. In order to survive the harsh situation of extreme famine, the North Korean are willing to

risk themselves by look for food in China. However, when they caught up in action, they would most likely sentenced into prison camps or even public execution.

Those people who defect from North Korea and caught by the authority was facing the worst of their life. North Korea known for its brutal prison camps. There are two kinds of prison; one is for the prisoner sentenced to "revolutionary re-education through labor." If they survive, they will be released back to society but will be monitored closely for the rest of their lives. The other prison is the no return prison, where the prisoners stay there until they die. Prison camps are pictured as horror for the North Korean that no one wants to get into. People in prison camps is treated like an animal. They got physical and sexual abuse, starvation, disease, and overwork. The prisoners could starve to death, and since the hunger was so extreme, the cannibalism occurred at one point. (Gauthier, 2015, pp. 113-115).

The existence of the prison camps and the violations sparked the anger of the international community. As a member of the UN, North Korea is obligated to uphold the human rights regulations of the UN Charter. As a member of the International Covenant on Civil and Political Rights (ICCPR) North Korea has violated the "prohibition of torture" (Article 7), the "prohibition of forced labour" (Article 8), "arbitrary detention" (Article 9(1)), 'the right to trial' (Article 9(4)) and 'the right to humanitarian treatment' (Article 10) under the ICCPR. Thus, the prison camps with all the harsh treatments have gone beyond the limits of tolerance (Report on Human Rights in North Korea, 2014).

Furthermore, North Korea was believed as state-induced famine, and mass atrocities within its prison camp system that have taken on the proportions of a homemade genocide (Park, *The Forgotten Genocide: North Korea's Prison State*, 2013, p. 64) North Korea is extensively violating the UN Genocide Convention. They demonstrate by aiming for destroying groups protected by international law and also making moves defined as genocidal in Article 2. Thus, article 2 of the UN Genocide Convention explained that genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. Genocide Watch stated that there is plenty of proof that genocide has and mass killing is still going on in North Korea (Genocide Alerts: North Korea, 2012). Based on seven years of research by Christian Solidarity Worldwide (CSW) in 2007 they published a report that confirmed there is an indicator of genocide in North Korea targeted to the religious group, specifically against Christian (Park,

Genocide in North Korea, 2012). The United States Commission on International Religious Freedom (USCIRF) in its Annual Report 2013, stated that *"the government tightly controls all religious activity and perpetuates an extreme cult of personality venerating the Kim family as a pseudo-religion."*

In reality, all citizen obliged to worship the leader. For those who found they owned any religious icon such as the Bible could be sentenced into a prison camp. The extermination of Christian and any other religious group is justified as the national security action. The North Korean defectors that forcibly returned will brutally be interrogated whether they have any contact with the religious group outside. If they had any or suspected converted to Christianity, they are either killed or sentenced to the prison camps for life along with their entire families. According to the Open Doors, the Christian people who now imprisoned in the prison camp estimated around 50.000-70.000 (Park, Genocide in North Korea, 2012).

Genocide also happened on national, ethical, and racial grounds through North Korea's policy of killing the half-Chinese babies of North Korean women that have been forcibly repatriated by China. Other than that, North Korea also brutally banished the children who suspected to be fathered by non-North Korean through infanticide and forced abortions. The UNHCR has officially recognized and acknowledged this brutal action by stating,

"continued violation of the human rights and fundamental freedoms of women, which in particular refers to the trafficking of women for prostitution or forced marriage, ethnically motivated forced abortions, including by labor inducing injection or natural delivery, as well as to infanticide of children of repatriated mothers, including in police detention centers and labor training camps." (Park, Genocide in North Korea, 2012)

The massive human rights violations within the country and the ongoing famine is the most prominent reasons why North Korean is looking for another place to live. They deal with a more significant risk when they choose to leave the country, and once they out of North Korea, the risk did not vanish. The defectors still need to face another problem when they reach their first escape place, China.

North Koreans have been crossing the border into China, since the height of North Korea's famine in the 1990s. The official Chinese authorities estimated the range of defectors from 10,000 to 300,000 or more. The crossing point for North Koreans migrated to China is through northeastern China by crossing Yalu and Tumen Rivers. Both China and North Korea authorities

Figure 1.1. Map of Defector Routes



Source : Lee H. , 2015

guarded the border; therefore the defectors must be hiding by crossing the river. If truth be told, this was the scariest part. They crossed the border illegally; therefore they need to prepare themselves both strategically and psychologically. The defector needs to stay cautious of the conditions around, so they will not get arrested. It should be mindful of that if the defector caught in the act, they would harshly be punished by seized them into the prison camps or even a death penalty. According to the interview from the defector conducted by Sung Ho Ko, Kiseon Chung, and Yoo-seok Oh, crossing the border was carried grave anxiety for all defectors. No matter how carefully they prepared, it is still not easy to make a safe defection. Board authorities are stationed every fifty meters, and the transportation system is in

unbelievably poor condition. It would take several days to get to the border, and they would hardly find a place to hide and had an overnight (Ko, Chung, & Oh, 2004, pp. 83-84).

After the defectors arrived in China, they will either go to their relatives who lived in China or lived in hiding, avoiding any contact who will risk them getting repatriated. Since China does not acknowledge the defectors as a refugee, they do not get any protection and very vulnerable to getting exploited by organized gangs and intermediaries. Human smuggling, trafficking, extortion, and exploitation are thought to be a growing problem. Women are particularly vulnerable to prostitution, rape, arranged marriages, and bride traffickers. It is reported that perhaps 80%-90% of North Koreans in China end up as trafficking victims (Margesson, Chanlett-Avery, & Bruno, 2007).

In order to survive in a foreign country without any legal protection, those defectors tried to behave and resemble the Chinese. They were forced to change their identity, their way of thinking, and also their appearance and behavior in order to conceal their true identity. Nonetheless, if anyone ever finds out their identity as a defector, they might be reported to the authorities and immediately being repatriated. Thus, the defector lived in constant fear of inspections, according to a report by Good Friends, 63.2% of the defector feel they were not secure in China (Lee & Kim, 2011, pp. 65-66).

The North Korean defector began to be known internationally around 1998-1999 when some South Korean civic group disclosed the punishment and repatriation that be done by the Chinese government towards the defectors. Seoul was proposed to Beijing to stop repatriating, and instead allowing the UNHCR to organize a refugee camp along the China-North Korea border. However, Beijing declined the proposal and insisted that the defectors are not a refugee but temporary migrants who were seeking for food. China also claimed that this matter was an internal affair between PRC and DPRK (Liu, 2003, p. 353). China tends to take a reluctant stance when it comes to international cooperation regarding the defector issue.

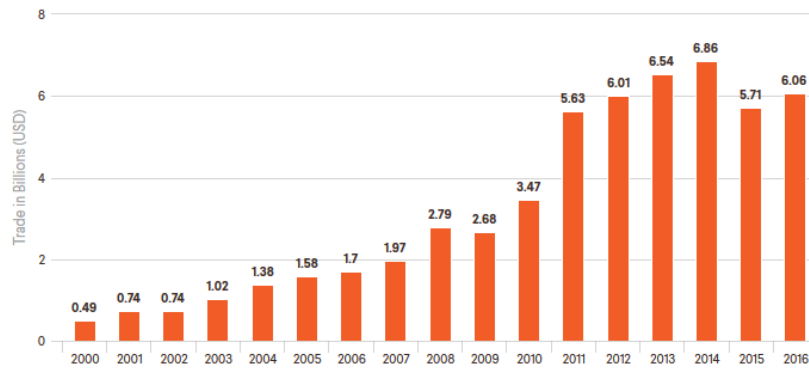
Chinese Government commanded its citizen including the Korean Chinese and South Korean religious and civic organization to not provide any shelter for the defector, if they did, they will be fined \$3000 or more which three times of average Chinese citizen earns annually. China also saw the defector as "nuisances" those who engage in illegal action and behavior such as robbing, criminal action, human trafficking, and forging official documents (Ko, Chung, & Oh, 2004, p. 73). China's hardline policy towards the defectors triggered international pressure. In March 2006, this issue was brought up in high-level talks between the UN High Commissioner for Refugees and the Chinese Foreign Ministry (Margesson, Chanlett-Avery, & Bruno, 2007, p. 12). On February 17, 2014, the United Nations Commission of Inquiry report on human rights in the Democratic People's Republic of Korea (DPRK) found China has violated its obligations under international human rights and refugee law towards its treatment of North Korean refugees. The report concluded that Chinese actions, particularly its practice of repatriating refugees to the DPRK, could be considered aiding in crimes against humanity. However, China has rejected the report and expressed it as an "unreasonable criticism" (UN Report Criticizes China for Treatment of North Korean Refugees Amid Worsening Situation, 2014).

China has been encouraged by the North Korean authorities to repatriate their citizen who fled to China under the Agreement on Repatriation of Border Crosser that was signed in 1987 (Ko, Chung, & Oh, 2004, p. 73). However, on the other side, China is also a party to the 1951 UN Refugee Convention and 1967 Protocol, yet China continuously violated their commitment by returning the defectors to North Korea. The principle of non-refoulement under the Convention 1951 and Protocol 1967 and the prohibition of torture and the principle of non-refoulement under the Convention against Torture are fundamental principles of international human rights laws. The human rights law are superior compared to all other international laws which well-known as *jus cogens*. This regulation makes the treaty between North Korea and China null and void. Thus, China did violate the International Law (Report on Human Rights in North Korea, 2014).

By not recognizing the defector as a refugee and even repatriated them, China is violating the international law of the principle non-refoulement under the 1967 Protocol. On the other hand, North Korea which has the world's worst human rights record also cannot let go of their citizens that easily. Both states have their interest which intertwined one another in terms of the defector. The historical relations of both countries might have an effect on their decision regarding the defectors. The fact that China and North Korea share a fairly long border, made them influence each other's history from the earliest time. The geographical location indeed played a huge role in shaping both countries relations in terms of cultures and politics. Lee Chae-jin said that China and the Korean peninsula shares "a long history of the complex, intimate relations."

China has always been provided North Korea with most of its food and energy supplies. The number was up to 90% of North Korea's total trade volume. Not only from the food and energy supplies. China also established a high-speed rail route between the Chinese border in order to boost bilateral economic relations. The high-speed rail route opened in Dandong which a hub for trade, investment, and tourism for both countries. Chinese and North Korean people also made the informal trade along both countries border, despite the sanctions for the illegal smuggler, they continue to operate up until now, the items that were sold such as cell phones, DVD, and fuel (Albert, 2018). Here the chart of the China and North Korea trade volume, below.

Figure 1.2 China and North Korea Trade Volume



Source: Korea Trade-Investment Promotion Agency (KOTRA), 2019

Historically, China and North Korea have an excellent mutual relation. North Korea was helped and protected by China, and China got the feedback in terms of national security by assisting North Korea. However, the interest of both countries is changing over time. The aggressive action of North Korea towards its nuclear arsenal is one of the reasons China grew concern and opposition. However, it cannot be denied that the stability of Korean peninsula is always the primary interest of China. As Jennifer Lind, a professor at Dartmouth University stated that Chinese would prefer that North Korea did not launch or have their nuclear weapon, because China's greatest fear is the North regime would collapse (Lind, 2017).

Influencing Factor : Overcoming the Odds

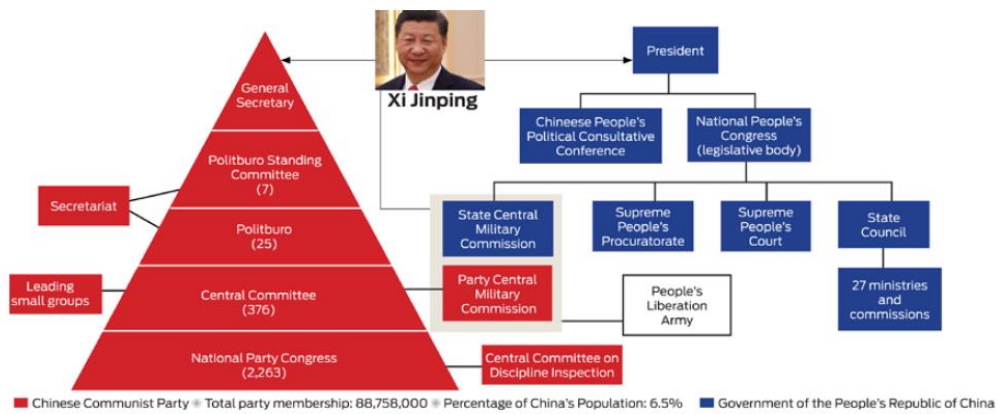
A. Domestic Politics Factor: Chinese Communist Party (CCP) as a Ruling Political Party

The first determinant in the Foreign Policy Decision Making Process by William D. Coplin is the domestic politics factor. It is divided into three; bureaucratic influencer, partisan influencer, and interest influencer. In this case of North Korean defector in China, the most dominant one is the partisan influencer. According to Coplin, partisan influencer refers to the political party that contributes to the decision making process. They try to take part in the decision-making process through the political members seated in the government (Coplin, 2003). In China, the CCP or Chinese Communist Party take a significant role in the government; it is the founding and ruling political party in China.

Chinese Communist Party or CCP was established in 1949 as the founding and ruling political party in China. CCP indeed has maintained its objectives in China by undertaking their political monopoly. CCP exercised the absolute control over the whole Chinese national policy, both directly and indirectly through impersonates one of participant elements of a "people's" government (Steiner, 1951).

China's political system is divided into three major institutions. They are CCP, the government, and the military. The government and the military are subordinate to the CCP. In other words, CCP is the leading political body that dictates the national policy agenda (China's 2017 Communist Party Leadership Structure & Transition, 2017). Here is the figure below :

Figure 1.3 Leadership Organizations within the CCP in Relation to the Government of the People's Republic of China



Source : China's 2017 Communist Party Leadership Structure & Transition, 2017

According to the figure above, as Xi Jinping being both the General Secretary of CCP and the President of the PRC, the Communist party's domination and primacy over the government is clear. Several crucial decisions of both foreign and domestic issue came from Politburo and its Standing Committee (Barnett, 1985).

North Korea and China were well known for their nickname of "blood brothers" because of their common socialist ideological ground. Communist from China and North Korea have together fought side by side against the Japanese colonialism in the 1920s. This bond was still going strong once they gained their independence, North Korea was supported the CCP in the Chinese Civil War. On the other hand, China also supplied troops in order to support North Korea in the Korean

War. China and North Korea common ideology certainly took part in their historical bilateral relations, this so-called "blood-bound alliance" (Yoon & Lee, 2013). However, it needs to be pointed out that any crucial decision regarding China's policy towards North Korea is subject to judgment and selection at the highest level. The policy regarding their relations has always revolved between the Ministry of Foreign Affairs and the International Department of the Chinese Communist Party's Central Committee (CCPCC). The Ministry of Foreign Affairs is focused on the relations within the international community including the West, yet, CCPCC focuses on North Korea and China relations, and even can be called pro-Pyongyang. CCPCC has advocated the cooperation with North Korea and strongly calling for solidified the political parties partnership between China and North Korea within the idea of "political trust" towards Pyongyang (Feng, 2009).

CCP as the biggest communist party in the world might felt that having an ally is essential for striving their left-wing solidarity. North Korea has always been one of China coalition since the Japanese colonization era. CCP was developed in the Korean war era as China, North Korea, and the Soviet Union whose ideology was communist get together on fighting the dominance of the United States. Therefore, one of China's way to maintain good relations with North Korea was through its ideological ally. By directly refused the North Korean defector as a refugee, China indirectly supported the Kim regime so it could be preserved and keep existing.

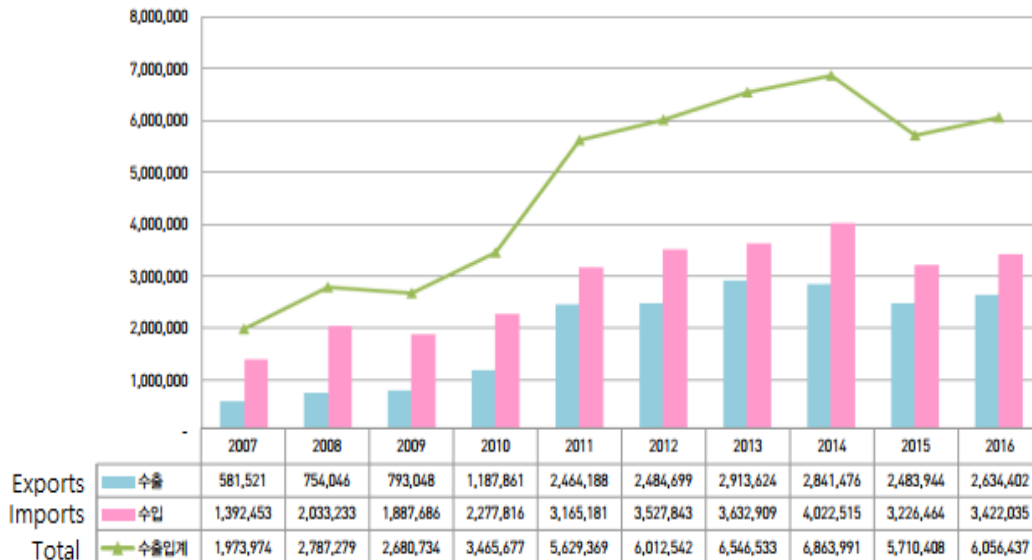
B. Economic and Military Factor: China's Efforts on Maintaining its Domestic Stability

An economic and military factor was the second determinant proposed by Coplin. Economic and military factor reflect the material power of the state and explicitly shows how stable the state is (Coplin, 2003). China experienced impressive growth in the last few decades that led them into granting the status of the world's second-largest economy. China was started its program of economic reforms in 1978 with a GDP of USD 214 billion and ranked ninth, while in 2013, China jumped to second place with a GDP of USD 9.2 trillion. This immense growth was mainly because of China's increase integration to the global economic sphere and the government's strives on supporting the economic activity (China Economic Outlook, 2019).

However, rapid economic power followed by a significant number of the population has brought many challenges as well, includes high economic inequality, environmental issue

sustainability, an aging population, and also the internal migration of labor (The World Bank In China, 2018). Despite all the hardships China faced in their domestic condition, they have been providing North Korea with much food and energy. After the Soviet Union collapsed at the end of the Cold War, China has become North Korea's biggest trading partner. Even though the political and economic condition also took part in the fluctuation of the trade's scale, since 2000 it has steadily increased. In January 2006, Kim Jong-il was visited the Chinese Industrial Zone for nine-days, and it was the evidence that China still and continues to have friendly relations with North Korea, and showing that China's intention to carry on its engagement policy, which China will or might not take a coercive stance towards North Korea in the near future (Kang, 2007). The table below shows how China has increased its trade with North Korea.

Figure 1.4 North Korea's Foreign Trade (in 1000USD)



Source : Korea Trade-Investment Promotion Agency (KOTRA), 2019

The table above shows that North Korea has a high-level dependence on China economically. As in 2005, Piao Jianyi from the Institute of Asia Pacific Studies in Beijing stated regarding the China economic influence towards the North, “*although many of our friends see it as a failing state, potentially one with nuclear weapons, China has a different view. North Korea has a reforming economy that is very weak, but every year is getting better, and the regime is taking measures to reform its economy*” (French, 2005). However, it is not merely about China's generosity towards North Korea. China also has its interest and motives.

China has always been a good partner of North Korea. However, those actions done by China did have a deeper intention. Political instabilities in North Korea including nuclear disputes, succession issue, and the massive flood of defectors will affect the pace of trans-border territorial between China and North Korea. Above all, China wants to maintain North Korea as its buffer zone. Thus, China did anything that will profitable to both, China and the Kim regime. One of the issues that might be the trigger for the collapse of the Kim regime is the flood of defectors.

Once China opens its door for North Korea defector, China will be the one who will bear the burden. It was all about stability. If China accepted the defectors, there would be a massive exodus of defectors into China. In one side, China has to assist them, financially and socially. It would become a significant economic problem if China were also accepting the North Korean refugee. The national unemployment number is already high, and China was dealing with the environmental issue and also an aging population. All these will only burden China even more. The Kim regime will collapse, and the one who bears the consequences is none other than China, the closest neighboring country.

China already has a domestic issue regarding economic and sustainability. It is not an easy task to overcome their lackluster economic growth. Therefore, China chose to be realistic in this issue. In order to avoid to face another big problem, China decides to assist the North Korean government rather than accepting the defectors. It will improve the relations of China and North Korea, lessen the possibility of the regime to collapse, and the most important thing is to maintain the stability within China.

C. International Context: China and the International Human Rights' Perception

The third and last determinant was the International context. It refers to the situation that happened in the international sphere. It will influence how the decision maker decides its action and decisions. According to Coplin, it includes a geographical, economic, and political condition in the past, present, and future that might be or be anticipated (Coplin, 2003). In the case with North Korean defectors, China has been pressured by the international community to uphold its obligation to protect the defectors. China remains still and moving forward to what they are believed in.

A human rights issue is becoming the Western countries priorities as a result of their bad experienced in the World War. The other way around, human rights still a secondary foreign policy concern for China. That is due to China as a socialist state is asserting the Marxist human rights and *"our style of human rights."* Karl Marx considered human rights as a group matter, not a personal one. Which a group's interests take the prime concern over the individual's inherent. (Report on Human Rights in North Korea, 2014). China expressed its opposition with the universal understanding of human rights, particularly the Western concept. As China believes international human rights are not a standalone foreign policy issue. Human rights are intertwined with many other national interests, according to the report by Chatam House, it includes

"making sure a beneficial international condition for the economic growth, preservation of its political system, and social stability, and also a defense of its territorial integrity" (Sceats & Breslin, 2012).

Thus, conclude that the Chinese government prioritizes its national interest and national profit over human rights. China sees human right is not absolute and putting the socioeconomic policy over people's guarantee of political rights. It is about "survival" of human rights. Rather than seek for individual safety, China thought the bigger picture is the economic development. Thus, the government will sometimes fail to notice the individual's right for the greater good (Sceats & Breslin, 2012).

China considers that the concept of human rights diverse based on each country's cultural, historical, sociological, and economic background. Thus, China also emphasized that forcing them to follow the Western concept is an intervention of internal affairs. However at the other hand, the Western still firmly committed to the international system of human right as their moral legitimacy in the post second World War (Lee J. H., 2016). The UN has continuously criticized and condemned China for their non-cooperation and rejection of UN's careful investigation regarding its human rights condition. China kept avoiding the investigation by obscuring information and hindering access. China claimed that the UN's action might violate its sovereignty. China chose to resist their responsibility within the international community in terms of human rights and stated that the UN concerns on human rights within China could be a form of intervention in internal affairs. (Lee J. H., 2016).

The international community might see the defectors as a refugee that need immediate help and asylum. However, as the writer mentioned earlier, China has a different approach towards human rights including the defector with the Western's perception. China saw those defectors as a temporary illegal migrant who did not need any assistance since there is no "real war" that happened in their homeland. Thus China still strongly uphold the belief that the defectors are in reality just a bunch of people who got away from their country for their personal reason which have no correlation with the understanding of China's human rights. Human rights indeed should be applied universally; however, the perception of what human rights is might differ with each nation. China used its sovereignty and different interpretation to justify their action towards the North Korean defector. Thus, a profound understanding and finding the middle ground between China and the International Community might be the way to rescue the North Korean defectors for any hardships that they already faced in their home country.

Conclusion

China has assigned the UNHCR's 1951 Convention and 1967 Protocol that obliged them to give protection to those who seek asylum to China. China did receive and granting refugee status to some refugee from conflicting countries, such as Lao, Cambodia, and Iraq. However, they refused to give any protection to the North Korean defectors. China even repatriated them at any time. This China's movement for not recognizing and even repatriate the North Korean defector caused much international community's critics. They believed that China abstained from their responsibility as a global power and as a member of the 1951 Convention & 1967 Protocol.

Whereas, the North Korean defector is facing the worst of their life. North Korea is well-known as a closed state; thus there is no exact explanation on how is the government is going in the country. Nonetheless, there were many pieces of evidence coming from some researches and testimony from the defectors that was showing the dictatorship and human right's violation carry on within the state. It was started when the extreme famine broke out on the 1990s and many of North Korean starving to death. This terrible condition forced them to survive by going to another region which was China. The famine was only the beginning of the massive exodus. The government continuously tormented its citizen by not only let them starved but also through the political repression which manifests explicitly within the prison camps.

Prison camps consist of those people who considered violate the law, including the defectors who caught in action. Within the prison camps, they experienced numerous human right's violation, such as overwork, starvation, sexual and physical abuse, and many others. Likewise, it came to the point where the prison camps also are the home of the homemade genocide. North Korea was found destroying groups of different ethnic and religion. This cold condition within the country is one of the biggest reason why the North Korean wanted to get away from their homeland.

Once the defector escapes from their home country, they faced another big problem in China. As China only recognize them as an illegal immigrant rather than a refugee, they got no protection and very vulnerable. They need to survive in a foreign country by hiding and staying in their relatives. If China authorities found them, they could forcibly be repatriated back to North Korea where they would deal with the prison camps or even death penalty. This is why China received many criticizations from the international community. China did the violation of human rights under its commitment to the Convention 1951 and Protocol 1967. China and North Korea's relations took a big part in this issue. North Korea was China long run ally since the Japan colonialization in the 1920s. North Korea acts as China's buffer zone; in return, China is becoming North Korea biggest trade partner. The interest of China and North Korea intertwined and the defectors' issue is becoming the casualty of both countries interest.

Thus, three determinants influence China's refusal to recognize the North Korean defector. First, in domestic politic factor, the Chinese Communist Party or CCP still played a big part in the decision-making process as the ruling party. China and North Korea who was called "blood brothers" due to their similar ideology seems still going strong up until now. In order to maintain its ideological ally, China did everything so that the Kim regime will not collapse, one of the movements of China was refusing the North Korean defector.

Second, in the economic and military sector, China as one of the leading nation which granting the status of the second-world largest economy also struggling with their economic problem which a slowdown in economic growth. China already had its hardships such as aging population, environmental issue, a significant number of unemployment and much more. China government did not want to burden their own by accepting the defectors. The massive flood of defector will eventually make the regime collapse, and China will be the one who bears the

consequences. Thus, China prefers to accommodate the North Korean government by providing food and energy rather than accepting the defector.

The last determinant, in the international context, China have a different interpretation of human rights with the international community, particularly with the Western concept. China saw human rights as a state matter, not a personal one. Therefore, China will put their national interest first, rather than individual rights. In this case, China chose to prioritized stabilizing North Korea for the national benefits, instead of complying with its responsibility under international law.

Therefore, this research concludes that the reason why China rejected granting the North Korean defector as a refugee because China wants to maintain its domestic stability. This could achieve by preventing the Kim regime from collapsing. By avoiding China's responsibility in the International law regarding the defector's rights, China deemed it was the right action to put their national interest first, preserve the Kim regime and maintaining the stability within North Korea and China.

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